

**Amendments to the Drawings:**

The attached sheets of drawings include a sheet showing the changes to Fig. 1, submitted as a replacement sheet and filed with a sheet showing the changes circled. Figure 8 is a new sheet showing a container with a cosmetic composition therein. All other replacement sheets reflect the change to the number of sheets wherein all changes are also shown circled on separate sheets.

## REMARKS

Applicants appreciate the Examiner's review of the present patent application. Applicants acknowledge that all prior rejections have been withdrawn. Regarding the amendments, all amendments made are supported by the specification and claims as originally filed. Therefore, the amendments comply with 35 USC §132 and no new matter has been added.

### I. Drawings

Applicants acknowledge that the Examiner has accepted the drawings received on May 15, 2006. Furthermore, Applicants acknowledge that the Examiner objects to the drawings under 37 CFR §1.83 as they relate to the cosmetic composition of claims 5-11 and the container of claim 9. While Applicants respectfully disagree, Applicants are forwarding to the Examiner for review new Figure 8 which depicts a cosmetic composition within a container. Support for such a figure may be found, among other places, in the claims as originally filed. Therefore, no new features are added to the specification in light of the new figure being filed.

### II. Claim Objections

The Examiner has objected to claims 3, 8 and 10 and alleges that the same recite functional language. While Applicants respectfully disagree, Applicants have amended claims 3, 8 and 10 in order to respond to the Examiner's suggestions and to expedite the prosecution of the present patent application. In light of such amendments,

Applicants request that the rejections to claims 3, 8 and 10 be withdrawn and rendered moot.

III. Rejection Under 35 USC §112, second paragraph

The Examiner has rejected claims 3 and 8-10 under 35 USC §112, second paragraph. In the rejection, the Examiner alleges that the same are indefinite for failing to particularly point out distinctly claimed subject matter which Applicants regard as the invention. The Examiner believes that the claims claim both an apparatus and a method step and are therefore indefinite.

While Applicants respectfully disagree, Applicants have amended the claims in order to expedite the prosecution of the present patent application and to further business objectives. In view of such amendments, Applicants believe they have fully responded to the Examiner's comments and request that the rejection made under 35 USC §112 be withdrawn and rendered moot.

IV. Rejection Under 35 USC §101

The Examiner has rejected claims 3 and 8-10 under 35 USC §101 and alleges that such claims are directed to non-statutory subject matter. In the rejection, the Examiner mentions, in summary, that the claims are directed to neither a process nor a machine but rather embraces or overlaps two different statutory classes. In view of this, the Examiner believes that the 101 rejection is warranted.

Notwithstanding the fact that Applicants respectfully disagree, Applicants have amended the claims in order to respond to the Examiner's suggestions and to expedite the prosecution of the present patent application. Such amendments are made in order

to further business objectives and in light of the same, Applicants request that the 101 rejection be withdrawn and rendered moot.

V. Rejection Under 35 USC §102

The Examiner has rejected claims 1-11 under 35 USC §102(a) as being anticipated by non-patent literature submission: abstract of a presentation at a skin conference in Hamburg, 2003 (hereinafter, abstract) specifically Flament et al., and entitled, "Finger Perception Metrology".

In the rejection, the Examiner mentions, in summary, that the abstract discloses a prototype tactile acoustic analysis apparatus that collects, stores, displays and correlates frictional forces generated by animal skin. The Examiner further mentions that the abstract discloses a means for digitally displaying test results. Based on the above, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as now presented, is directed to an acoustic emission measurement system comprising:

- (A) means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces;
- (B) means for collecting, storing and displaying said emission signal;
- (C) means for correlating said emission signal with an attribute of said skin;

wherein said system is used as a clinical tool to evaluate efficacy of cosmetic skin care and/or cleansing products.

The invention of claim 1 is further defined by dependent claims which claim, among other things, that the means for displaying the emission signal comprises a medium selected from the Internet, a camera, palm pilot, mobile phone, mobile camera phone and advertising and promotional material that can include a television, magazines, brochures, posters, flyers and handouts. The invention of claim 1 is further defined by additional dependent claims which claim, among other things that the system may be used by a consumer, beautician, or professional advisors and that the correlating represents attributes of pores, wrinkles, photo aging or skin texture. Again, Applicants wish to point out to the Examiner that the present system is superior in that an acoustic emission signal from the body is generated by contacting skin-on-skin. Direct application of a probe or device onto the body is not required and this is what makes the present invention superior.

Independent claim 5 describes a cosmetic product selection and/or customization system comprising the acoustic emission system of claim 1.

Turning to the abstract relied on by the Examiner, the abstract is merely directed to finger perception metrology whereby finger sliding tests are performed on various abrasive papers to show a good correlation of the co-efficient of friction and the variations of acoustic signals (amplitude and waveband). A prototype of perception metrology therefore, is described to quantify the friction and acoustic signals during the sliding of the finger on a surface of materials. The teachings of the abstract clearly teach away from the presently claimed invention which creates emission signals from a body by contacting skin on skin. Direct application of a device onto the body is not

required in the current invention but is required in the technology described in the reference.

In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the abstract. Therefore, the Applicants request that the novelty rejection be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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